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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7031 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HAKUMAT DESAI

Versus

OFFICE OF DIRECTOR OF PENSION & PROVIDENT FUND

Appearance:

MR RR MARSHALL for Petitioner
Mr.M.A.Bukhari, AGP for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 16/07/1999

ORAL JUDGEMENT

#. The short question which is surfaced in this petition under Article 226 of the Constitution of India is whether the petitioner is entitled to add the period from 1.7.51 to 19.11.54 during which he worked as a part time Teacher for the purposes of computation for considering qualifying length of service for pension or not ?.

#. A resume of short and relevant facts may stated at the first stage. The petitioner joined the service on 1.7.1951 as a part time Lecturer in K.P. College of Commerce, Surat. Later on the Sarvajanic Education Society, a body which manages Colleges and other institutions on account of exigency of services, the petitioner was asked to take lectures in Gujarati at the M.T.B. Arts College, Surat. Both colleges were under the management of the parent body i.e. Sarvajanic Education Society. It is the case of the petitioner that styling his full time work in both the Colleges as part time, he was being paid according to the rates then in force. It is therefore, claimed that though the office of the management treated the period between 1.7.51 and 19.11.64, the date of resignation of the petitioner, as a part time Lecturer, he worked as a full timer. In support of this contention no order is produced. The reply to the letter sent to the petitioner dated 7.5.1990 is at Annexure.C by the Higher Education Director clearly enumerates that the petitioner was working in the college as a part timer from 1.7.51 to 19.11.54 and pursuant to the Resolution of 15.10.84, the period of part timers is not to be included for the purpose of retiral benefits. It was also made very clear that the subsequent period from 20.11.54 to 1.7.55 the petitioner worked in the printing press of the Government of India and as per the provisions contained in the aforesaid Government Resolution dated 15.10.84 that period was also not to be included for the purpose of pension.

#. After having heard the learned advocate Mr. Marshal for the petitioner and the learned Assistant Government Pleader Mr. Bukhari and considering the facts and circumstances and the Government Resolutions and the Pension Rules, this Court has no hesitation in holding that present petition is unmerited. The period sought to be reckoned for the purpose of computing qualifying service from 1.7.51 to 19.11.54 being part time service as a Teacher has to be excluded and cannot be included in view of clear provisions contained in the Government Resolution dated 15.10.84.

#. The preamble of Government Resolution, Education Department dated 15.10.84 produced at Annexure.B says that so far as pension scheme for teaching staff in non Government affiliated colleges and in the Universities, Government Resolution, Finance Department No. FPS-1071-J dated 1.1.19972 as amended from time to time should be made applicable to the full time teaching staff of the Universities under Education Department and in affiliated

and aided non-Government Arts, Science, Commerce and Education Colleges in the State. It is obviously clear and evident that the expression 'qualifying service for the purpose of pension under the Scheme does not include or cover part time services. On the contrary, clause 6 relied upon by learned advocate Mr. Marshal reads as under:

" 6. In computing the length of qualifying service for perusal under this scheme, all previous services whether temporary, officiating or permanent either in the or more than one non-Government aided colleges, University Department, Higher Secondary School who are being paid Grant-in-aid from Government shall be taken into account. The period of break in service will not be considered as qualifying service i.e. actual service rendered will be considered as qualifying service."

This clause runs counter to the submission of Mr. Marshal that part time service would also be included in pensionable scheme.

#. After having taken into consideration the aforesaid facts and circumstances and the provisions contained in the Government Resolution dated 15.10.1984, this petition deserves to be rejected and accordingly it is rejected. Rule discharged. No costs.